

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JESSE WADE,

Petitioner,

v.

Case No. 10-11257
HONORABLE AVERN COHN

MARY BERGHUIS,

Respondent.

_____ /

ORDER DENYING PETITIONER'S MOTION TO STAY THE PETITION (Doc. No. 5)

I.

This is a habeas case under 28 U.S.C. § 2254. Petitioner is proceeding pro se. Before the Court is Petitioner's one-page "Motion to Stay Petition to Expand State Record." It is unclear from the motion whether Petitioner seeks to expand the factual record as to his current habeas claims and/or to raise and exhaust additional habeas claims in the state courts. Respondent has not yet filed a response to the motion.¹ For the reasons that follow, the motion will be denied without prejudice.

II.

A federal district court has discretion to stay a mixed habeas petition, containing both exhausted and unexhausted claims, to allow a petitioner to present unexhausted claims to the state courts and then return to federal court on a perfected petition. See

¹The petition was filed on March 30, 2010. On April 2, 2010, the Court entered an order directing Respondent to file a response on or before October 7, 2010. Petitioner filed the instant motion on April 23, 2010.

Rhines v. Weber, 544 U.S. 269, 276 (2005). Stay and abeyance is available only in “limited circumstances” such as when the one-year statute of limitations poses a concern, and when the petitioner demonstrates “good cause” for the failure to exhaust state remedies before proceeding in federal court, the petitioner has not engaged in intentionally dilatory litigation tactics, and the unexhausted claims are not “plainly meritless.” Id. at 277. Petitioner has not shown the need for a stay in this case. Moreover, the Court cannot determine whether a stay is warranted based upon the record before it. As noted above, Respondent has not yet filed an answer to the petition, nor submitted the relevant state court record. Upon receipt of Respondent’s answer and the state court record, the Court will be better able to consider Petitioner’s motion.

III.

Accordingly, Petitioner’s motion is DENIED WITHOUT PREJUDICE.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: May 4, 2010

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record and Jesse Wade, #130913, West Shoreline Correctional Facility, 2500 S. Sheridan Drive, Muskegon Heights, MI 494444 on this date, May 4, 2010, by electronic and/or ordinary mail.

s/LaShawn Saulsberry
Case Manager, (313) 234-5160